

APPEAL NO. 042171
FILED OCTOBER 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 3, 2004. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to include osteoarthritis. The appellant (claimant) appealed, arguing that the extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The carrier asserted that the appeal should not be considered because it was not timely served on the carrier. The claimant's appeal was timely filed with the Texas Workers' Compensation Commission (Commission) and the appeal contains a certificate of service which indicates the appeal was served on the carrier the same date it was sent to the Commission. The carrier's mere assertion that it did not receive a copy of the appeal until September 30, 2004, will not preclude the appeal from consideration.

The parties stipulated that the claimant sustained a compensable injury on _____. At issue was whether the compensable injury extended to include osteoarthritis. The claimant had the burden of proof on this issue and it presented a question of fact for the hearing officer to resolve. We have held that an aggravation of a previous condition can be an injury in its own right. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. However, after reviewing the evidence the hearing officer was not persuaded that the _____, compensable injury accelerated or enhanced the arthritis in the claimant's left knee.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Although conflicting evidence was presented on the disputed issue, nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
ADDRESS
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Veronica L. Ruberto
Appeals Judge